

Discourse on the Legality of Rebellion in the Hanafi Jurisprudence

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Abstract

Abū Ḥanīfah, the founder of the Hanafi School, holds that an unjust person or the one who commits major sins is not entitled to rule the Muslim community. However, as the attempt to forcefully remove such a ruler may lead to bloodshed and disorder, Abū Ḥanīfah did not allow such an attempt unless it could be proved that it was the lesser of the two evils. Moreover, Abū Ḥanīfah was of the view that all the lawful commands of such an unjust ruler must be obeyed till he remained in power. However, he accepted the consequences of de facto authority for such a ruler under the doctrine of necessity. The manuals of law-proper in the Hanafi School show that the Hanafi School officially accepted the foundations of the position of Abū Ḥanīfah in recognizing the limited right the community to remove an unjust ruler. The right stems from the concept of commanding good and forbidding evil which, according to the Hanafi law, is a universal obligation. However, like other obligations, it also has some prerequisites as well as legal obstacles which must be observed in order to avoid greater mischief.

Keywords: Imam Abū Ḥanīfah, Rebellion against unjust Rulers, Prerequisites of removing unjust Rulers, Hanafi school of thought

Introduction:

The creed of Abū Ḥanīfah had significant implications for the legal right of the Muslim community to forcefully remove an unjust ruler if peaceful means failed to improve the situation and, as such, as it is well-established that Abū Ḥanīfah personally advocated this right. Some scholars, however, assert that the official position of the Hanafi School is different from that of Abū Ḥanīfah on this issue. This paper, therefore, first examines the sources about the views of Abu Hanifah to find out the legal foundations on which Abū Ḥanīfah built this right for the Muslim community and then analyzes the classical manuals of the Hanafi School so as to ascertain if the School recognized and accepted these legal foundations or not. After this, it thoroughly examines the work of Ibn ‘Ābidīn, presumably the greatest of the later Hanafi jurists, to see how the later jurists examine the *jus ad bellum* of rebellion.

Section One: Abū Ḥanīfah and Rebellion against Unjust Rulers:

This section first examines the implications of the creed of Abū Ḥanīfah for the right of the Muslim community to forcefully remove an unjust ruler. Then, it tries to find out the legal foundations on which this right is based after which it surveys the historical sources to see how did Abū Ḥanīfah conduct himself during various rebellions in his lifetime. Finally, it tries to determine from the conduct of Abū Ḥanīfah prerequisites for exercising this right.

1.1 Implications of Abū Ḥanīfah’s Creed :

As noted earlier, the problem of rebellion involves issues of creed, history as well as law and politics. Abu'l Fadl rightly points out:

“In the field of rebellion, Muslim jurists also responded to theological demands, e.g. how does one declare rebellion to be a crime without suggesting that some of the most esteemed Companions of the Prophet were

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criminal? Significantly, however, they also worked within an inherited legal culture that imposed its own logic and language.”¹

The answers of Abū Ḥanīfah to the questions relating to theological aspects of this issue are recorded in his *al-Fiqh al-Akbar*. Thus, he declared that a Muslim who commits a major sin does not abandon faith and as such a *fāsiq* (sinner) is not deemed *kāfir* (unbeliever).² The famous Ḥanafī jurist of the third/ninth century, Abu Ja‘far al-Ṭahāwī (d. 321 AH/933 CE) who was among the *mujtahidin fi ’l-masa’il*, affirms this position of the Ḥanafī School when he says: “A person does not leave faith except by disavowing what brought him into it.”³ Similarly, about the fate of a sinner Muslim, Abū Ḥanīfah declared: “We do not say that a believer cannot be condemned to hell nor do we say that a *fāsiq* will remain in hell forever.”⁴ Ṭahāwī elaborates this in the following words:

“We do not pass judgment about any of the *Ahl al-Qibla* if he would necessarily go to the paradise or hell, nor do we label them with disbelief (*kufr*), polytheism (*shirk*) or hypocrisy (*nifāq*) unless they commit an explicit act of the sort, and we leave the matter of their intentions to Allah.”⁵

Regarding the successors of the Prophet (peace be on him), Abū Ḥanīfah declared:

“The best person after the Prophet (peace be on him) is Abū Bakr al-Ṣiddīq, then ‘Umar b. al-Khaṭṭāb, then ‘Uthmān b. ‘Affān, then ‘Ali b. Abī Ṭālib (Allah be pleased with them all). All of them were on the right path and remained on the right path all through their life.”⁶

About all of the Companions, Abū Ḥanīfah declared: “We mention the Companions with praise only.”⁷ Ṭahāwī elaborates this doctrine in the following words:

“We love all the Companions of the Prophet (peace be on him), but we do not excessively love just one of them and we do not express disapproval of (*lā natabarra*) any of them. We do not like those people who hate the Companions or say bad words about them. We do not mention the Companions except with praise.”⁸

Despite this, Abū Ḥanīfah openly declared that in all his wars, ‘Ali was on the right side.⁹ This is a very crucial point in ascertaining the position of Abū Ḥanīfah and this will be further explained in Section 1.3 below.

“Mawdūdi explains the consequences of the theological position taken by Abū Ḥanīfah in the following words:

This creed meant that the community had full trust in the early Muslim society established by the Prophet (peace be on him). The community accepts all the decisions made by that society through consensus or majority. It accepts the legal and the constitutional status of the caliphs elected successively by that society as well as of the decisions of those caliphs. Furthermore, it accepts the whole knowledge of the *sharī‘ah* transmitted from the members of that society (Companions) to the Muslim community through generations.”¹⁰

How this creed helped in creating the legal right of the community to forcefully remove an unjust ruler? This is elaborated below.

1.2 Legal Foundations of Abū Ḥanīfah's Position :

It is well-known that Abū Ḥanīfah held that "prayer is valid be it performed in the leadership of a pious person or a sinner."¹¹ Did it mean that he did not stipulate the condition of being just ('adl) for the ruler? Many sources record his position that he explicitly stipulated this condition for the ruler.¹² This was the reason why he opposed all the Umayyad and Abbasid rulers of his time, except 'Umar b. 'Abd al-'Azīz.¹³ What, then, was the legal principle on which Abū Ḥanīfah based his legal position?

It is a well-established principle of the Ḥanafi law that '*adālah* is an essential condition for the witness.¹⁴ It is also a well-established principle of the Ḥanafi law that all the conditions for the witness must also be present in the *qādi* (judge).¹⁵ Hence, the jurists always cite '*adālah* among the conditions for the judicial post.¹⁶ Did Abū Ḥanīfah stipulate this condition for witness and judge and not for *khalīfah* (ruler)?

Jassāṣ refutes this claim and forcefully asserts that Abū Ḥanīfah does not distinguish between the legal position of *qādi* (judge) and *khalīfah* (ruler) insofar as the condition of '*adālah* is prescribed for both:

"There is no difference, for Abū Ḥanīfah, between *qādi* and *khalīfah* as far as the stipulation of '*adālah* is concerned; he holds that *fāsiq* can neither become judge nor ruler in much the same way as neither the testimony of such a person is accepted nor his narration of a tradition of the Prophet (peace be on him). And how can he become *khalīfah* when even his narration is unacceptable and his orders are unenforced!"¹⁷

Jassāṣ, then, explains the basis for another rule of the Hanafi law which is sometimes misunderstood:

"People may have misunderstood, if they did not intentionally ascribe a false statement to Abū Ḥanīfah and the rest of the Iraqi jurists, two rules one of which says that if the judge himself is just and he is given judicial authority by an unjust ruler, his orders are enforced and his decisions are valid; and the other rule says that offering prayer behind such rulers is valid even if they are sinners and tyrants."¹⁸

In other words, Abū Ḥanīfah distinguished between the *de facto* and *de jure* authority of the unjust ruler.

Jassāṣ, then, cites the conduct of the famous judge Shurayḥ who served under the Rightly-guided Caliphs as well as the Umayyad rulers:

"Shurayḥ remained a judge in Kūfah during the governorship of al-Hajjāj [b. Yusuf], while no one among the Arabs or among the descendants of Marwān [b. al-Hakam] was worse in tyranny, disbelief and sin than 'Abd al-Malik [b. Marwan] and none among the governors of 'Abd al-Malik was worse in tyranny, disbelief and sin than al-Hajjāj!"¹⁹

He further cites the conduct of some great Companions (God be pleased with them) who would accept the grants (*wazā'if*) of the Umayyad rulers because they were legally entitled to such grants. Thus, he quotes 'Abdullah b. 'Umar (God be pleased with him) saying to the Umayyad ruler: "I am not going to ask anything from you but I will also not return to you what Allah gives me through you."²⁰

Jassās also points out that this position of Abū Ḥanifah was well-known to other jurists as well who took a different position. Thus, he quotes ‘Abd al-Rahmā an al-Awza ā‘i, the famous Syrian jurist and contemporary of Abū Ḥanifah, who said: “We could bear all statements of Abū Ḥanifah, except his statement regarding rebellion against unjust rulers.”²¹

Another important foundation on which Abū Ḥanifah based the community’s right to remove the unjust ruler with force was the religious and legal duty of enjoining right and forbidding wrong. Abū Ḥanifah himself narrated a tradition in this regard to the famous jurist of Khurāsān Ibrāhīm al-Sā’igh: “The best of the martyrs is Hamzah b. ‘Abd al-Muttalib and the one who stood against an unjust ruler enjoining right and forbidding wrong and [resultantly] he was killed.”²² It was after his discussion with Abū Ḥanifah that Ibrāhīm stood against the Abbasid governor Abū Muslim Khurāsāni and was martyred.²³

Jassās while explaining the position of Abū Ḥanifah elaborates how some people who preach passive obedience to unjust rulers and who consider rising up against them as *fitnah* (mischief) have caused greater harm to Muslims than their adversaries. It seems imperative to reproduce this long quote from Jassās as it candidly elaborates the rationale of the position taken by Abū Ḥanifah about how the duty of enjoining right and forbidding wrong leads to removal of unjust ruler by war, if necessary:

“These people rejected war against the unjust group and enjoining right and forbidding wrong using weapon. They called enjoining right and forbidding wrong as mischief when it necessitates the use of weapon and war against the unjust group. This despite the fact that they heard what Allah Most High said about such people: “Fight against the group which transgresses till it returns to the law of Allah”; and the word [*qātilū*: fight] includes war using sword and other things. They hold that the ruler must not be prohibited from tyranny, injustice and killing without a legal cause and that the non-rulers would be prohibited verbally or forcefully without using weapons. Thus, they caused more harm to *ummah* than its adversaries as they prevented people from fighting the unjust group and from prohibiting the ruler from tyranny and injustice. This led to the dominance of the evildoers, rather the Magians and the enemies of Islam. Resultantly, borders became unsafe; injustice prevailed; cities have been destroyed; religious and worldly interests have been defeated; and heretics (*al-Zanādiqah*), extremism (*al-Ghuluww*) and following of belief in two gods (*al-Thanawiyah*) as well as al-Khurramiyyah and al-Mazdakiyyah, got dominance. All this has been placed on them because of their abandoning the duty of enjoining right and forbidding wrong and preventing the ruler from injustice. Help is sought from Allah!”²⁴

A question arises here: what was the conduct of Abū Ḥanifah against the unjust rulers of his time, both from among the Umayyads and the Abbasids? This will be discussed in the next Section.

1.3 Abū Ḥanifah and the Umayyad and Abbasid Rulers :

It is well-known that Abū Ḥanifah was born in 80 AH/699 CE and died in 150 AH/767 CE. If one focuses on the era from 95 AH/713 CE, when Abū Ḥanifah was fifteen, till he

died in 150 AH, he saw the rule of nine Umayyad rulers and two Abbasid rulers (al-Saffāh and al-Mansūr).²⁵ This period saw many rebellions the most important of which was the Abbasid rebellion in 132 AH/750 CE which succeeded in overthrowing the Umayyad dynasty and establishing the Abbasid rule. By that time, Abū Ḥanīfah was fifty-two and had already attained the status of the greatest jurist of Iraq and had gathered a great number of following. That was why the second Abbasid caliph Abu Ja‘far al-Mansūr (d. 158 AH/775 CE) tried his best – sometimes offering a key-post and sometimes using coercive means – to win over Abū Ḥanīfah.²⁶

Already the Umayyad Governor Yazīd b. ‘Umar b. Hubayrah had failed in 130 AH/748 CE despite severe persecution to win the loyalty of Abū Ḥanīfah whose love with the descendants of ‘Ai (God be pleased with him) and whose stance about the rightfulness of ‘Ali (God be pleased with him) in all his wars was well-known.²⁷ Thus, when in 122 AH/740 CE Zayd b. ‘Ali (God bless him), the son of ‘Ali Zayn al-‘Ābidīn (God bless him) from a concubine, revolted against the Umayyad caliph Hishām b. ‘Abd al-Malik (d. 125 AH/743 CE), everyone knew that the loyalty of Abū Ḥanīfah was with Zayd against the ruler.²⁸ When Zayd was martyred, all his supporters – including Abū Ḥanīfah – were bitterly persecuted by the Umayyads.²⁹

Now when Mansūr, the Abbasid caliph, tried to win over Abū Ḥanīfah and failed in so doing, he also started persecuting him.³⁰ The tension escalated when in 145 AH/762 CE Muḥammad b. ‘Abdillah Dhu al-Nafs al-Zakiyyah, the great grandson of Ḥasan b. ‘Ali (God be pleased with them), revolted against Mansūr.³¹ Everyone knew that Abū Ḥanīfah was supporting the revolutionaries and that he even gave them financial aid.³² Not only that Abū Ḥanīfah publicly supported the cause of the revolutionaries by criticizing the tyrannical policies of the ruler and his officers.³³ When the revolution failed and Nafs Zakiyyah was martyred, Mansūr turned to Abū Ḥanīfah and other supporters of the revolution and targeted them with the worst kind of persecution. Abū Ḥanīfah died in prison. Some sources report that he was poisoned.³⁴

Now the question is: when Abū Ḥanīfah was actively and publicly supporting the cause of the revolutionaries against the unjust rulers, why he personally did not participate in rebellion? Rather, why he tried to prevent rebellion instead? The reasons for this became clear when Abū Ḥanīfah personally explained them to one the revolutionaries against the Abbasids – Ibrāhīm al-Ṣā’igh.

1.4 Prerequisites of Rebellion: Dialogue of Abū Ḥanīfah and Ibrāhīm al-Ṣā’igh:

Forceful removal of an unjust ruler, more often than not, involves bloodshed and war which is why those who are concerned with right and wrong have to calculate which of the two evils should be deemed a lesser evil: the continued existence of the unjust ruler or the expected bloodshed in the effort to remove him. They also have to see if the unjust ruler can be replaced by a just ruler, i.e., do the rebels have the alternate leadership? These are questions on which opinions may differ and this is exactly why Abū Ḥanīfah’s calculation differed from that of some of his contemporaries who opted for rebellion, such as Zayd b. ‘Ali, Nafs Zakiyyah and Ibrāhīm al-Ṣā’igh.

“Abdullah b. al-Mubārik (d. 180 AH/797 CE), one of the famous scholars of ḥadīth and a disciple of Abū Ḥanīfah, narrates that when Abū Ḥanīfah heard of the martyrdom of Ibrāhīm he wept so much that we feared his death. After he

absorbed that shock he said very good words about Ibrāhīm and said: "This is what I feared about him." He, then, explained that Ibrāhīm would come to Abū Ḥanīfah many a times arguing on the issue of enjoining right and forbidding wrong till they both agreed that preventing an unjust ruler from injustice was obligatory. At that point, said Abū Ḥanīfah, Ibrāhīm asked him to come forward so that he would take oath of allegiance to him and they would start movement for toppling the unjust [Abbāsid] regime. Abū Ḥanīfah, then, explained the reason for his refusal to do so:

He invited me to one of the rights of God [obligatory duties of the believers], but I prevented him from this and told him: if a man alone would rise for this, he would be killed and things would not improve for people; however, if he finds good supporters and a man who should lead them and who can be trusted in matters of the religion of Allah, then there is no other way.³⁵

Abū Ḥanīfah further said that Ibrāhīm would come to him and demand of him to lead the revolution. In response, Abū Ḥanīfah would say:

"This is a wrong which cannot be corrected by an individual. Even the Prophets would not do it till it was imposed on them from the heavens. This obligation is unlike the other obligations which can be performed by an individual, while if he rises up for performing this obligation he will shed his blood and will render himself for being killed and I am afraid he will be responsible for abetting his own killing. When such a person is killed, others will not have the courage to risk their lives. Hence, one has to wait."³⁶

Thus, while Abū Ḥanīfah in principle agreed on the obligation of the removal of an unjust ruler he did not personally participate in rebellion because, in his opinion, its pre-requisites were not fulfilled. These included:

- That the rebels could offer the alternative leadership which fulfilled the conditions prescribed by the law;
- That the rebels have enough power to replace the government; and
- That the bloodshed caused by rebellion is a lesser evil as compared to the continued existence of the unjust ruler.

Section Two: Legal Position of the Hanafi School:

Some scholars have raised doubts about the legal position of the Hanafi School on the right of the community to rise up against an unjust ruler. Mawlānā Mawdūdi, though himself an advocate of this right and wrote in detail on the position of Abū Ḥanīfah, admitted the possibility that the position of the Hanafi School might be different from that of Abū Ḥanīfah. This Section analyzes the views of the Elders of the Hanafi School so as to determine the official position of the School on the limited right to rebellion recognized by Abū Ḥanīfah.

2.1 Position of Abū Ḥanīfah or the Hanafi School? :

Mawdūdi first wrote an article on the views of Abū Ḥanīfah about political order.³⁷ In this article, he expressed almost the same view as presented in Section 6.1 above. However, when some scholars objected to this view citing some of the provisions of the Hanafi jurists

which apparently conflicted with this position, Mawdūdi opined that the Hanafi School might have a different position than the personal opinion of Abū Ḥanifah on this issue.³⁸

While it is true that the position of Abū Ḥanifah and that of the Hanafi School do not necessarily coincide, this interpretation is not to be adopted unless it is based on some strong arguments. The presumption is that the position of Abū Ḥanifah is the position of the Hanafi School. Ibn ‘Ābidin and other jurists writing on the principles of the Hanafi School about determining the official position of the School have explicitly asserted that primarily the School follows the opinion of the Imām.³⁹

Secondly, it is also worth consideration that the manuals of the School have preserved for later generations the difference of opinion between Abū Ḥanifah and his disciples on thousands of issues, but nowhere in the basic texts of the School a difference of opinion on this issue has been recorded.⁴⁰

Thirdly, whenever the School adopted a view other than that of the Imam, the Elders of the School mention details about why they prefer the view of the disciples instead of that of the Imam. No such explanation is found in the authoritative manuals of the School.⁴¹ The position of Abū Ḥanifah on rebellion was well-known and still if none of the basic manuals of the School refutes gathers arguments against this position, the presumption that the same is the position of the School holds ground.

Fourthly, and most importantly, the basic texts of the School have plenty of evidence supporting the position of Abū Ḥanifah, while those passages – mostly found in the works of the later jurists – can be easily accommodated with the position of Abū Ḥanifah. In any case, if there is a conflict, the views of the later jurists have to be interpreted in the light of the position of Abū Ḥanifah, not vice versa.⁴² This is to be done in the next Section.

2.2 Recognizing the Foundations for the Right to Rebellion:

Jurists of the Hanafi School have not only followed the position of Abū Ḥanifah regarding the rightfulness of ‘Ali (God be pleased with him) in all his wars but have also accepted the two foundations on which Abū Ḥanifah built up the right of the community to forcefully remove the unjust rulers, namely, the condition of *‘adālah* for the ruler and the obligatory duty of enjoining right and forbidding wrong.

Thus, Jassās, in the fourth/tenth century, explicitly asserts:

“ ‘Ali (Allah be pleased with him) accompanied by some prominent Companions, including those who participated in the Battle of Badr⁴³, fought rebels with sword. And in his wars, ‘Ali was on the right side. Furthermore, none opposed him on this issue, except those who rebelled against him and those who followed these rebels.’”⁴⁴

The same position is taken by Sarakhsī, in the fifth/eleventh century, when he says:

“Allah sent His Prophet (peace be on him) with four swords. With one sword, he himself fought the Arab pagans; ... with the second sword, Abu Bakr fought the apostates; ... with the third sword, ‘Umar fought the Magians and the People of the Book; ... and with the fourth sword, ‘Ali fought the anarchists, the rebels and the iniquitous...”⁴⁵

Marghīnānī, in the sixth/twelfth century, further elaborates this point and says:

“It is valid to accept appointment on judicial post from an unjust ruler as it is valid to accept appointment from a just ruler because many Companions accepted appointment on judicial posts from Mu‘āwiyah (Allah be pleased with him) while ‘Ali (Allah be pleased with him) was on the right side in his conflicts with Mu‘āwiyah.”⁴⁶

As far as the condition of ‘adālah is concerned, Sarakhsī mentions it among the three fundamental conditions for capacity to testify (*ahliyyat al-shahādah*).⁴⁷ It is also well-established position of the School that the capacity for judicial post (*ahliyyat al-qadā’*) depends on capacity to testify. Marghīnānī says:

“The validity of judicial post is based on the validity of testimony as both of them are forms of *wilāyah* (legal authority). Hence, everyone having the capacity of testimony has the capacity of becoming a judge, and whatever condition is prescribed for testimony is also prescribed for the judicial post.”⁴⁸

He further asserts that if a judge is ‘*adl* at the time of his appointment but later becomes *fāsiq* (corrupt) by taking bribe, he does not automatically lose his post but he deserves removal. “This is the official position of the School (*Zāhir al-madhhab*) and this is what our Elders (God bless them) hold.”⁴⁹

As for the rule that judicial appointment by an unjust ruler is valid, it has already been explained above that it is based on distinction between *de jure* and *de facto* authority. Moreover, as noted earlier, the same has been the position of Abū Ḥanīfah as well.

An important aspect of this issue is that judicial as well as governmental authority are forms of the duty of enjoining right and forbidding wrong⁵⁰ and this is one of arguments on which the Ḥanafī School relies for validating the appointments on judicial posts by rebels who are presumed unjust (*ahl al-baghy*). Thus, Sarakhsī asserts unequivocally:

“Decision on the basis of justice and repelling injustice from the oppressed is a corollary of the duty of enjoining right and forbidding wrong, which is obligatory on every Muslim. However, the subjects cannot perform this duty as it is impossible for them to enforce their decisions. Hence, when it becomes possible for a person because of the power of the one who appointed him, he must decide in accordance with what is obligatory on him, irrespective of whether the one who appointed him is unjust or just, because the condition for [the validity of] the appointment was the possibility [of enforcing the decisions] which is available now.”⁵¹

This principle is further substantiated by another significant ruling of the Ḥanafī School is the one related to destroying the musical instruments belonging to a Muslim. The *Bidāyat al-Mubtadī*, the most authentic text of the Ḥanafī School, declares that a person doing so is liable to pay damages. *Al-Hidāyah*, which is the most authentic commentary of *Bidāyah*, while explaining this rule asserts: “Enjoining right with force (*bi ’l-yad*) is for the rulers because they have power (*li-qudratihim*).”⁵² Thus, the School recognizes the validity of the use of force for enjoining right if a person has the power for so doing, i.e., if he can enforce it without causing greater mischief. This is exactly how Abū Ḥanīfah explained his position to Ibrāhīm al-Ṣā’igh, as noted earlier.

Finally, Sarakhsī while explaining the concepts of ‘azīmah (original rule) and *rukhsah* (exemption) asserts that originally the law requires of a Muslim to enjoin right and forbid wrong even if it risks his life, although it also gives exemption of remaining silent.

“A Muslim is permitted to prohibit other Muslims, who are sinners, from committing wrong even if he is sure that they would not abandon that wrong and would kill him. Indeed, this is the original rule (*wa huwa al-azīmah*), although it is permitted for him to take the exemption of remaining silent (*wa yajūz lahu al-tarakhkhūs bi ’l-sukūt*).”⁵³

This clearly establishes that what Abū Ḥanīfah did was the original rule, the ‘azīmah, while others may have opted to take benefit of the exemption, the *rukhsah*.

This point becomes even clearer when one looks at how the Elders of the School interpreted the conduct of the Companions (God be pleased with them) who did not take sides during civil war. For instance, Sarakhsī says: “The interpretation of what has been reported of Ibn ‘Umar and other Companions (God be pleased with them) that they stayed in their homes is that he did not have capability (*tāqah*) of fighting while this is obligatory on the one who has this capability.”⁵⁴

In the same way, the Elders of the School have asserted that if two factions of Muslims are at war with each other, other Muslims must side with the faction which is on the right side. As for the traditions which prohibit Muslims from taking sides in such a situation, they hold that these traditions relate to the situation where one does not know which of the two factions are on the right side, or where one knows that none of them fights for religion.⁵⁵

Section Three: Ibn ‘Ābidīn’s Exposition of the Ḥanafī Law on Rebellion:

Some of the scholars who are of the opinion that the position of the Ḥanafī School was different from that Abū Ḥanīfah cite some passages of the later jurists. Hence, it is imperative to examine such passages in the light of the analysis of ‘Allāma Ibn ‘Ābidīn al-Šāmī who was undoubtedly the greatest of the later jurists of the Ḥanafī School.

Ibn ‘Ābidīn wrote glosses (*ḥawāshi*) on the *al-Durr al-Mukhtār* of ‘Alā’ al-Dīn al-Ḥaṣkāfī, which was the *sharḥ* (commentary) of the *matn* (text) of *Tanwīr al-Abṣār* composed by al-Tamartāshī. The discussion here is from *Kitāb al-Jihād, Bāb al-Bughāh*.

3.1 Who is a “Just Ruler” and Who are “Rebels”?:

Tamartāshī defines rebels (*bughāh*) in the following words: “They are the people who go out of the obedience of a just ruler without a just cause.”⁵⁶ What Ḥaṣkāfī adds to this is really significant: “Hence, if they have a just cause, they are *not* rebels. The details of this are in *Jāmi‘ al-Fuṣūlayn*.⁵⁷ Ibn ‘Ābidīn adds a gloss to the phrase “just ruler” (*al-imām al-ḥaqq*): “It apparently includes the usurper (*mutaghallib*)⁵⁸ because after his rule is established and his domination completes, it is not permitted to rise against him, as the jurists have explicitly said.”⁵⁹ The reason for prohibiting this was the fear of greater mischief, as Ibn ‘Ābidīn explains later. This is also substantiated by an important quote from *al-Durr al-Muntaqā*: “This was in the period of the earlier jurists. In our time the rule is decided by the dominance as everyone seeks the worldly benefits. Hence, the just and the unjust are not known.”⁶⁰ The jurist appears to be saying that as everyone is fighting for worldly gains, without being bothered by religious and moral considerations, the just or unjust nature of the movement has lost importance; what remains important is dominance; hence, it will be

unjust to rise up against a dominant group as it leads to anarchy; however, if those rising up gets dominance, it will be unjust for others then to rise up against them.

This is important because, as noted above, those who rise up against the ruler could be termed *bughāh* only if they unjustly rise up against a just ruler. This necessitates discussion on the just or unjust cause of the movement against the government.

3.2 Rebellion “Without a Just Cause”:

Ibn ‘Ābidīn explains that the rebels having no just cause means: “in actual reality” (*fi nafs al-amr*). “Otherwise, the legal condition is their belief in their having a just cause for in the absence of this they are criminals (*lūsūs*).”⁶¹ At this point, Ibn ‘Ābidīn quotes the important passage from *Jāmi‘ al-Fuṣūlāy* to which Ḥaṣkāfi referred:

“When Muslims are united under the leadership of one ruler and they live under him with peace and a group of believers rise up against him; then, if they did so because of an injustice which he did to them, they are not rebels and he is under an obligation to abandon injustice to them and do justice to them. In such a situation, *people should not support the ruler* against them as it will be supporting in injustice. They should also not support the other group against the ruler⁶² because it is supporting them in rising up against the ruler. However, if they rise up without an injustice to them on the part of the ruler, but because of their claim to the prior right to rule and authority and they say: we have the right to rule; then, they are rebels. In this case, everyone who is capable of fighting is under an obligation to support the ruler against these rebels as they have been cursed in the words of the Lawgiver.”⁶³

Ibn ‘Ābidīn cites this passage with approval, except for the rule that ordinary Muslims “should also not support the other group against the ruler” and asserts that this needs some clarification.⁶⁴ See Section 3.5 below for a discussion on this important point.

3.3 Three Categories of Those Who Rise Up against the Ruler :

Ḥaṣkāfi categorizes those who take up arms against government into three categories: bandits, rebels and khawārij.⁶⁵

Ibn ‘Ābidīn, on the authority of Ibn al-Hūmān and other jurists, divides bandits into two kinds: “Those who rise up without having a just cause, be they have resistance power or not, and they forcefully take the property of Muslims, kill them and make the highway unsafe; second is such a group of people who lack resistance power but they claim to have a just cause.”⁶⁶ Hence, the absence of either resistance power or just cause will make the group bandits while the combination of these two characteristics will make them rebels.⁶⁷ As for khawārij, Ḥaṣkāfi says:

“They are the people having resistance power who rise up against the ruler on the basis of a justification as in their view the ruler is on the wrong side because of committing infidelity or sin according to their interpretation. They deem our blood and property permissible, enslave our women and declare the Companions of our Prophet (peace be on him) were infidels. Their legal position is that of the rebels by the consensus of the jurists.”⁶⁸

Ibn ‘Ābidīn adds to this that if the rebels ascribe infidelity to the ruler, they are khawārij even if they do no ascribe infidelity to the Companions (God be pleased with them):

“Apparently, this is a definition of the khawārij who rose up against ‘Ali (God be pleased with him) because the distinguishing factor between rebels and khawārij is that they [the khawārij] believe in the permissibility of [shedding] the blood of Muslims and enslaving their children because of their [presumed] infidelity, as children cannot be originally enslaved without infidelity.”⁶⁹

He further explains this by citing other sources that “rebels” (*bughāh*) is a general term which includes both of these groups. “Otherwise, ‘rebellion’ (*baghy*) and ‘going out’ (*khurūj*) are found in both groups. That is why ‘Ali (God be pleased with him) said about khawārij: our brothers rebelled against us.”⁷⁰

After this, the text discusses the lawful modes of appointment of the ruler and in that context examines the validity of the rule of usurpers.

3.4 Modes of Acquiring Political Power :

Tamartāshi gives the basic rules about the appointment of the ruler and the role of dominance (*qahr*) in this regard in the following words:

“The ruler becomes the ruler by oath of allegiance by the elders and the elites; and also by the fact that his rule is enforced on his subjects due to the fear of his dominance and supremacy. Hence, if people give him the oath of allegiance but his rule is not enforced because of his weakness, he does not become the ruler. Similarly, when he becomes the ruler and his rule is validated, he does not lose office [due to injustice] till he retains power and dominance. But if he loses dominance, he also loses office because of injustice.”⁷¹

Ibn ‘Ābidin first adds to it the following important passage from *al-Musāyahah* of Ibn al-Humām:

“The contract of *imāmah* is established either when the khalifah nominates his successor, as Abū Bakr (God be pleased with him) did, or when a group of scholars or People of Opinion and Policy give him oath of allegiance. Al-Ash‘ari is of the opinion that the oath of allegiance by one scholar who is among the well-known People of Opinion is enough provided it is done in the presence of witnesses to avoid the possibility of denial. The Mu‘tazilah require at least five persons. Some of the Ḥanafies prescribe oath of allegiance by a group without specifying a number.”⁷²

After this he cites another passage from the same source:

“If the conditions of knowledge and sagacity are lacking in the one rising for the rule and denying the rule to him will cause uncontrollable mischief, we acknowledge the establishment of his rule so that it does not resemble the one who constructs a palace and destroys a city. When another usurper overpowers the existing usurper and sits on his place, the previous usurper gets removed and the second one becomes the ruler. It is obligatory to obey the ruler irrespective of whether he is just or unjust, provided he does not go against the *Shar‘*.”⁷³

From this Ibn ‘Ābidin concludes that ruler is appointed by three modes, “but the third mode is about the usurper even if he does not fulfill the conditions of the *imāmah*.⁷⁴

At the end of this discussion, while commenting on the necessity of enforcement of the rule, Ibn ‘Ābidin highlights a point which is very important for the purpose of this paper:

“Even in the presence of the oath allegiance enforcement of his decisions is a condition. It is also a condition in the presence of nomination, as is obvious. Rather, a person becomes a ruler by dominance, enforcing his decisions and control in the absence of the oath of allegiance and nominations, as you have come to know.”⁷⁵

Hence, primarily it is dominance and prevalence which give *de facto* validity to any ruler. What if a ruler loses this supremacy? This leads us to the next important, perhaps the most important, issue for the purpose of this paper.

3.5 Grounds on Which the Ruler Deserves Removal :

As noted in previous Section, Tamartāshi asserts that an unjust ruler loses his office due to injustice if he also loses dominance. To this, Ibn ‘Ābidin adds an important passage from *Sharḥ al-Maqāṣid*:

“The contract of *imāmah* is terminated by the factors that are not compatible with the purpose of *imāmah*, such as apostasy, continued insanity or his becoming imprisoned with no hope of release. The same is the effect of the disease because of which he loses his memory. Similar is the effect when he becomes blind, deaf or dumb. The same is the rule when he removes himself because he cannot protect the interests of Muslims, even when this is not obvious but only he feels like that. The abdication of al-Ḥasan [b. ‘Ali, God be pleased with them] should be deemed to be on this basis. When he removes himself without a cause, there is disagreement on its effect as is the case with his losing his office by committing a sin. Most of the jurists hold that he does not lose office by this and this is the preferred view in the School of al-Šāfi‘ī and Abū Ḥanifah (God have mercy on them both). From Muḥammad there are two narrations. However, *all have a consensus that he deserves removal in this case.*”⁷⁶

Ibn ‘Ābidin, then, cites Ibn al-Humām who adds that “he deserves removal, provided it does not amount to mischief (*fasād*).”⁷⁷ Even more explicit and more important is the text which he cites from *Sharḥ al-Mawāqif*:

“The *ummah* has the right to remove and depose the *imām* on the basis of any cause that makes it obligatory, such as when something is found in him which deteriorates the affairs of Muslims and is destructive to religious matters, in the same way as they have the authority to appoint and authorize him for managing and improving these affairs. If his deposing leads to mischief, the lesser of the two evils will be borne.”⁷⁸

This is exactly what Abū Ḥanifah had been asserting throughout and this is how he explained his position to Ibrāhīm al-Ṣā’igh.

Finally, Ibn ‘Ābidin comes up with another important and explicit passage from *Fath al-Qadīr* of Ibn al-Humām:

“It is obligatory on everyone capable of fighting to fight in support of the ruler, except when the rebels show what makes it permissible for them to fight against the ruler, such as the fact that he did a very manifest injustice to them, or to others. In such a situation, *it is obligatory on them to support the rebels* till the ruler does justice to them and abandons injustice. However, the rule will be different if the injustice is not manifest, such as when he imposed on them some of the taxes which the ruler has an authority to impose and for which he can lawfully cause harm to some individuals for the purpose of repelling a general harm to people.”⁷⁹

Indeed, this is the crux of the matter. This clearly explains the point that the later jurists did not deviate from what the Elders of the School as well as the Founder of the School had determined and that they stuck to the official position of the School in letter and spirit.

Conclusion:

This survey of the historical and legal sources about the views of Abū Ḥanīfah and the official position of the Hanafi School on the right of the Muslim community to forcefully remove an unjust ruler shows that this right was a corollary of the creed which Abū Ḥanīfah had been preaching throughout his life. It also shows that the roots of this right are found in the doctrine of enjoining right and forbidding wrong which, according to the Hanafi law, is a universal obligation. However, Abū Ḥanīfah prescribed some prerequisites for the exercise of this right to ensure that it does not result in creating greater mischief. The same has been the position of the Ḥanafi School which has been misinterpreted sometimes to prove that the School denies this right altogether. The net conclusion is that the School, like its founder, recognizes a “limited” right of rebellion for the community which could be exercised only as a last resort and as a lesser evil. God knows best.

EndNotes:

¹ Abou El Fadl, *Rebellion and Violence*, 21.

² See for a detailed discussion on this issue: Sadia Tabassum, “Rebellion: Issues of Faith and Rebellion,” (forthcoming).

³ Ibn Abi al-‘Izz, *Sharḥ al-‘Aqīdah al-Tahāwiyyah*, 458.

⁴ Qāri, *Sharḥ al-Fiqh al-Akbar*, 229.

⁵ Ibn Abi ’l-‘Izz, *Sharḥ al-‘Aqīdah al-Tahāwiyyah*, 529.

⁶ Qāri, *Sharḥ al-Fiqh al-Akbar*, 182-86. See also: *Sharḥ al-‘Aqīdah al-Tahāwiyyah*, 698-727. It may be noted here that Abū Ḥanīfah personally loved ‘Ali more (Kirdāri, *Manāqib al-Imām al-A‘zam*, 2:72) and personally did not prefer between ‘Ali and ‘Uthmān. (Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 1:111). The same was the opinion of Malik b. Anas, the founder of the Mālikī School. (Ibn ‘Abd al-Barr al-Andalusi, *al-Istī’āb fī Ma’rifat al-Āshāb* (Cairo: Maktabah Nahdah, 1960), 2:467).

⁷ Qāri, *Sharḥ al-Fiqh al-Akbar*, 209.

⁸ Ibn Abi ’l-‘Izz, *Sharḥ al-‘Aqīdah al-Tahāwiyyah*, 689.

⁹ Kirdāri, *Manāqib al-Imām al-A‘zam*, 2: 71-72. See also: al-Muwaffaq b. Aḥmad al-Makki, *Manāqib al-Imām al-A‘zam Abī Ḥanīfah* (Hyderabad: Dā’irat al-Ma‘arif al-Nu‘māniyyah, 1321 AH), 2: 83-84.

¹⁰ Mawdūdi, *Khilāfat-o-Mulūkiyyat*, 236

¹¹ Qāri, *Sharh al-Fiqh al-Akbar*, 227.

¹² Al-Makki, *Manāqib al-Imām al-A‘zam Abī Ḥanīfah*, 2: 100.

¹³ See Section 1.3 below for details.

¹⁴ Marghīnāni, *al-Hidāyah*, 3:117.

¹⁵ Ibid, 101.

¹⁶ Ibid.

¹⁷ Jassās, *Aḥkām al-Qur’ān*, 1:99. He quotes several incidents from the life of Abū Ḥanīfah to substantiate this claim. See Section 1.3 below.

¹⁸ Jassās, *Aḥkām al-Qur’ān*, 100.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid., 1:99.

²³ For details of the discussion between Abū Ḥanīfah and Ibrāhīm al-Šā’igh, see 6.1.3 below.

²⁴ Jassās, *Aḥkām al-Qur’ān*, 2:50-51.

²⁵ Abū Ḥanīfah was born in 80 AH/699 CE. Thus, Abd al-Malik b. Marwān (r. 65-85 AH/685-705 CE) was the ruler when Abū Ḥanīfah was born. In 95 AH/713 CE, Walīd b. ‘Abd al-Malik (r. 85-96 AH/705-715 CE) was the ruler. The Umayyad dynasty was overthrown in 132 AH/750 CE. By that time nine rulers had changed. Abū Ḥanīfah died in 150 AH/767 CE during the reign of the second Abbasid caliph Manṣūr (r. 136-158 AH/754-775 CE).

²⁶ Makki, *Manāqib al-Imām al-A‘zam*, 2:172-178; al-Khaṭīb al-Baghdādi, *Tarīkh Baghda*, 13:320.

²⁷ Abū Zahra, *Abī Ḥanīfah*, 41-42.

²⁸ Jassās, *Aḥkām al-Qur’ān*, 1:81; al-Makki, *Manāqib al-Imām al-A‘zam*, 1:260.

²⁹ Makki, *Manāqib al-Imām al-A‘zam*, 2:21-24.

³⁰ Ibid., 2:173-74.

³¹ Ibn al-Athīr, *al-Kāmil*, 5:18. See for detailed reports about the revolt of Zayd b. ‘Ali: Tabari, *Tarīkh al-Umam wa al-Mulūk*, 6:155-263.

³² Kirdāri, *Manāqib Abī Ḥanīfah*, 2:71-72; Makki, *Manāqib al-Imām al-A‘zam*, 2:83-84; Jassās, *Aḥkām al-Qur’ān*, 1:99.

³³ Most importantly he convinced Hasan b. Qaḥṭubah, the commander-in-chief of the Abbasid forces, not to send troops against Nafs Zakiyyah. Kirdāri, *Manāqib Abī Ḥanīfah*, 2:22.

³⁴ Abu Zahra, *Abī Ḥanīfah*, 54-59.

³⁵ Jassās, *Aḥkām al-Qur’ān*, 2:49.

³⁶ Ibid., 2:49-50.

³⁷ The title of the article is “Mas’ala-e-Khilāfat men Imām Abū Ḥanīfah kā Maslak [The Legal Position of Imām Abū Ḥanīfah on the Issue of Caliphate]” and it was first published in Monthly “*Tarjumān al-Qur’ān*” in August-September 1963. Later, it was published in a collection of the articles of Mawdūdi titled: *Tafhīmat* (Lahore: Islamic Publications, 1978), 3:269-299. It was also published as a chapter in his book *Khilāfat-o-Mulūkiyyat* (Lahore: Idāra-e-Tarjumān al-Qur’ān, 2003), 245-276.

³⁸ He expressed this view in another article titled “Khurūj Imām Abū Ḥanīfah kā Maslak [The Legal Position of Imam Abu Hanifah on the Issue of Rebellion]”. Again, it was first

published in *Tarjumān al-Qur'ān*, November 1963-January 1964. Later, it was also published in *Tafhīmāt*, 3:300-320.

³⁹ Qāḍīkhān Fakhr al-Dīn al-Ḥasan b. Mansūr, *Fatāwā Qāḍīkhān fī Madhab al-Imām al-A'ẓam Abī Ḥanīfah al-Nu'mān* (Quetta: Maktabah Rashidiyyah, n. d.), 1:9; Muḥammad Amīn Ibn 'Ābidīn al-Shāmī, *Sharḥ Uqūd Rasm al-Muftī* (Lahore: Suhaib Academy, 1396/1976), 17-20.

⁴⁰ The manuals of the school do not mention any difference of opinion between Abū Ḥanīfah and his disciples on the foundations on which Abū Ḥanīfah developed the right of the community to remove an unjust ruler.

⁴¹ For instance, the School preferred the view of the two disciples on the issue of crop-sharing (*muzāra'ah*) and the jurists discussed this disagreement in quite detail. Marghīnāni, *al-Hidāyah*, 4:337. The same is true of their disagreement on charitable trust (*waqf*). *Ibid.*, 3:15-16. No such discussion is found on the issue of rebellion against an unjust ruler or the condition of '*adālah* for ruler, judge or witness.

⁴² Qāḍīkhān, *Fatāwā Qāḍīkhān*, 1:9; Ibn 'Ābidīn, *Sharḥ Uqūd Rasm al-Muftī*, 17-20.

⁴³ Among the Companions of the Prophet (peace be on him) those who participated in the famous Battle of Badr have a distinct and prominent position. They are deemed the torchbearers of justice, righteousness and truth.

⁴⁴ Jassās, *Aḥkām al-Qur'ān*, 3:595-96.

⁴⁵ Sarakhsī, *Al-Mabsūt*, 10:4.

⁴⁶ Marghīnāni, *Al-Hidāyah*, 3:111.

⁴⁷ Sarakhsī, *Al-Mabsūt*, 16:113. The other two are intellect ('*aql*) and memory (*dabṭ*).

⁴⁸ Marghīnāni, *Al-Hidāyah*, 3:117.

⁴⁹ *Ibid.*, 3:101.

⁵⁰ *Ibid.*, 3:103.

⁵¹ Sarakhsī, *Al-Mabsūt*, 10:138.

⁵² Marghīnāni, *Al-Hidāyah*, 3:307.

⁵³ Sarakhsī, *Sharḥ Kitāb al-Siyar al-Kabīr*, 1:116.

⁵⁴ Sarakhsī, *al-Mabsūt*, 10:132.

⁵⁵ *Ibid.* See also: Jassās, *Aḥkām al-Qur'ān*, 3:597.

⁵⁶ Ibn 'Ābidīn, *Radd al-Muḥtār*, 6:411.

⁵⁷ *Ibid.*

⁵⁸ Mutaghallib is the one who assumes political power through dominance without being elected by the Electoral College or nominated by the existing ruler. See for details on the rules and principles of Islamic law about the rule of the mutaghallib: Sadia Tabassum, "Rebellion: Issues of Faith and Rebellion," (forthcoming).

⁵⁹ Ibn 'Ābidīn, *Radd al-Muḥtār*, 6:411.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Ibn 'Ābidīn's note on this: "This needs further discussion as explained later." *Ibid.*, 6:412.

⁶³ *Ibid.*, 6:411-412.

⁶⁴ *Ibid.*, 6:412.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ See for details: Sadia Tabassum, “Combatants, Not Bandits: Status of Rebels in Islamic Law,” *International Review of the Red Cross* 93: 881 (2011), 121-139.

⁶⁸ Ibn ‘Ābidīn, *Radd al-Muhtār*, 6:412-13.

⁶⁹ *Ibid.*, 412.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, 414.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.* See for a detailed discussion on this issue: Sadia Tabassum, “Rebellion: Issues of Faith and Rebellion,” (forthcoming).

⁷⁵ Ibn ‘Ābidīn, *Radd al-Muhtār*, 414.

⁷⁶ *Ibid.*, 415.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, 416.

⁷⁹ *Ibid.*